

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 01-2225

IN RE: KENTH ROGERS,
Petitioner

On a Petition for Writ of Mandamus from the
United States District Court for the Virgin Islands
(Related to D.V.I. Civ. No. 01-cv-00001)

Submitted Under Rule 21, Fed. R. App. Pro.

Before: Mansmann, Rendell and Stapleton, Circuit Judges.

(Filed: June 5, 2001)

OPINION

PER CURIAM

In June 2000 the Department of Housing, Parks and Recreation terminated agreements with various itinerant vendors who for many years had conducted their vending business at the scenic overlook across from Drake's Seat in St. Thomas, United States Virgin Islands. Represented by the petitioner, Kenth Rogers, the vendors filed suit seeking injunctive relief and damages. However, in the course of a hearing the district court determined that pursuant to an order of the Department of Licensing and Consumer Affairs ("the Department") dated March 13, 2001, Rogers no longer had a license to

practice law. The Department's order revoked Rogers' license to practice law and ordered him to "cease all operations with respect to the practice of law within the territorial limits of the United States Virgin Islands" because he had not had a valid business license since 1991 and was in arrears of fees and penalties in the amount of \$16,875. By order entered April 24, 2001, the District Court gave the plaintiffs two weeks to find replacement counsel, but noted that if Rogers could demonstrate that his license has been reinstated or that the effect of the revocation has otherwise been suspended, he may continue to represent the plaintiffs. Meanwhile, on March 18, 2001, Rogers filed a complaint in the Territorial Court for the Virgin Islands seeking a preliminary restraining order and temporary and permanent injunction enjoining the Commissioner of Licensing and Consumer Affairs and the Government of the Virgin Islands from prohibiting him from practicing law.

On May 8, 2000, Rogers filed the instant petition for a writ of prohibition or mandamus seeking an order rescinding that portion of the District Court's order terminating his representation of the vendors until the Territorial Court rules on his complaint.

The criteria for granting petitions for a writ of mandamus or prohibition are the same. United States v. Santtini, 963 F.2d 585 (3d Cir. 1992). Only exceptional circumstances amounting to a usurpation of power justify granting a petition for a writ of mandamus. Citibank, N.A. v. Fullam, 580 F.2d 82 (3d Cir. 1978). The District Court must either have acted outside its prescribed jurisdiction or failed to exercise its authority

when it has a duty to do so. Roche v. Evaporated Milk Ass'n., 319 U.S. 21 (1943). Not only does the petitioner have the burden of showing that he has a “clear and undisputable” right to the writ, but even if he succeeds in doing so, granting of the writ is a matter of the court’s discretion. Kerr v. United States District Court, 426 U.S. 394, 403 (1976).

Rogers has failed to show that he has a clear and indisputable right to the writ. He has provided no authority indicating that the District Court erred in requiring him to cease representing the vendors following the Department’s order, let alone that the District Court acted outside its jurisdiction in doing so.¹ Accordingly, we shall deny Roger’s petition.

¹ The District Court’s order provides that in the event that Rogers’ license is reinstated he may resume representation of the vendors. While Rogers has attacked the revocation of his license in the Territorial Court, he has yet to prevail. Nor, evidently, has his license been reinstated through other means.